



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,043	10/02/2001	Peter Frederick Wilde	690100.401US	7687

7590 06/18/2003
Seed Intellectual Property Law Group
701 Fifth Avenue Suite 6300
Seattle, WA 98104-7092

EXAMINER

NGUYEN, TAM M

ART UNIT	PAPER NUMBER
----------	--------------

1764

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,043

Applicant(s)

WILDE, PETER FREDERICK

Examiner

Tam M. Nguyen

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9 and 10. 6) ☐ Other:

Art Unit: 1764

DETAILED ACTION

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilde et al. (GB 2276392).

Wilde discloses a process for extracting oil from a substance by contacting the substance with a solvent comprising HFC 134a (1, 1, 1, 2-tetrafluoroethane) in a sealed first vessel which is then heated. A solution of oil and HFC 134a from the first vessel is then passed into an evaporator (a second vessel) wherein the solution is then cooled to separate oil from the solution. (See example A on pages 13-15 and claim 6). This is deemed to anticipate the limitation of claim 1.

Claim 7:

Wilde discloses that the second vessel (evaporator) is cooled to very low temperature and it is desirable to immerse the second vessel in a water bath furnished with an immersion heater and thermostat. The thermostat is set to activate the immersion heater when the water

Art Unit: 1764

temperature fell to 10° C and to switch off the heater whenever the temperature of water exceeded 12° C. This is deemed to anticipate the limitation of claim 7. (See page 14; lines 21-26)

Claim 8:

The substance is a seed (see claim 7). This is deemed to anticipate the limitation of claim 8.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilde et al. (GB 2276392)

The process of Wilde is as discussed above.

Wilde does not specifically disclose that the first vessel is heated to a temperature of from 40 to 60° C. However, Wilde teaches that in order to improve the recovery of solvent, it is necessary to introduce heat to the extractor and its contents (see the last paragraph on page 15).

Art Unit: 1764

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of Wilde by heating the first vessel at the claimed temperature because one of skill in the art would employ any temperature (including the claimed pressure) that would enhance the recovery of solvent in the second vessel and it would be expected that the results would be the same or similar when operating the first vessel at either 39° C or 40° C.

Claim 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powell et al. (WO 95/26794) in view of Wilde et al. (GB 2276392).

Powell discloses a process for extracting oil from a substance by contacting the substance with a solvent comprising HFC 134a (1, 1, 1, 2-tetrafluoroethane) in a first vessel in which a solution of oil and HFC 134a is then passed into an evaporator system (a second vessel) wherein oil is separated from the solution. Powell also discloses that the extraction apparatus (first vessel) has an aerosol valve fitting attached to its mouth and after the required amount of extraction solvent had been charged to the extractor (first vessel) which is clamped to a mechanical shaker. Therefore, the examiner's position is that the extraction apparatus is sealed during the shaking step. (See pages 7-10).

Claims 1 and 11:

Powell does not specifically disclose a step of heating the first vessel by a heating means and a step of cooling the second vessel. However, Wilde discloses a process of extracting oil from a substance wherein the first vessel is heated and the second is cooled to release oil from solution (see Wilde: the third and fourth paragraphs in page 14 and the last paragraph in page 15). Therefore, it would have been obvious to one having ordinary skill in the art at the time the

Art Unit: 1764

invention was made to have modified the process of Powell to heat the first vessel by a heating means and to cool the second vessel as claimed because heating the first vessel would improve the recovery of solvent and cooling the second vessel would enhance the separation of solvent from the extracted oil.

Claims 2-5:

The co-solvent is dimethyl ether (DME). Since the co-solvent of Powell is the same the claimed co-solvent, it is inherent that the co-solvent of Powell is liquid at room temperature. (See examples 1-2)

Claim 6:

Both Powell and Wilde do not disclose that the first vessel is heated to a temperature of from 40 to 60° C. However, Wilde teaches that in order to improve the recovery of solvent, it is necessary to introduce heat to the extractor and its contents (see the last paragraph in page 15). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of Powell/Wilde by heating the first vessel at the claimed temperatures because one of skill in the art would heat the first vessel at any temperature (including the claimed temperature) to enhance the recovery of solvent in the second vessel and it would be expected that the results would be the same or similar when heating the first vessel either at 39° C or 40° C.

Claim 7:

Powell does not disclose that the second vessel is cooled to a temperature of from -10° C to 25° C. However, Powell discloses that the distillation (evaporation) is carried out at a relative low temperature and the evaporation of the extraction solvent is aided by immersing the lower

Art Unit: 1764

half of the evaporation chamber in an ambient temperature (which is about 20-24° C) water bath.

The examiners position is that the second vessel (evaporator) is cooled to a temperature within the claimed ranges. (See page 7, lines 2-11; page 9, lines 3-6)

Claim 8:

The substance is a seed. (See page 3, line 4)

Claim 9:

The process of Powell including an apparatus system is as discussed above. Powell further discloses that the two vessels are connected by pipe work wherein the solution from the first vessel, which comprises a filtering means, is passed to the second vessel which is associated with a cooling means. Both vessels have an inlet and an outlet wherein the first vessel and second vessel are associated with each other by a valve. (See pages 7-10)

Powell does not specifically disclose that the second vessel has its own closable valves. However, it appears that both inlet and outlet of the second vessel should be closed when the transferring of liquid or substance in or out of the vessel is completed (see pages 7 and 8). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of Powell/Wilde by employing at least one closable valve for the second vessel as claimed because a closable valve is a device that have both function for either opening or closing when it is needed.

Claim 10:

Powell does not disclose that the valves are a one way valve which arranged as claimed. However, The flowing of the solvent and the solvent/oil solution within the process of Powell is a one way flow (See pages 7-9). Therefore, it would have been obvious to one having ordinary

Art Unit: 1764

skill in the art at the time the invention was made to have modified the process of Powell/Wilde by utilizing one-way valves and arrange them in the modified process as claimed because it would be effective to use one way valves in the one-way process of Powell.

Claim 12:

The solvent (from a reservoir) is fed into the extractor and the recovery solvent from the second vessel is recharged to the extraction vessel via the inlet by a means. (See page 7)

Claim 13:

The oil (extractant) is separated from the solvent from the second vessel by a means. (See pages 7 and 8)

Claim 14:

Powell does not disclose that the apparatus includes means for determining the temperature of the first and second vessels. However, Powell discloses that it is important to operate the second vessel at room temperature or lower (see page 7, lines 2-11) and the first vessel of the modified process of Powell comprises a heating means. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the apparatus of Powell/Wilde by employing a means for determining the temperature of the first and second vessels because it is critical to regulate the temperatures of the first and second vessels at predetermined temperatures.

Claim 15:

The first and second vessels of Powell are transparent pressure vessels because Powell discloses that the solvent liquid containing the extract is transferred from the extraction apparatus to the evaporation chamber by depressing the valve which is forced the solvent liquid transfer

Art Unit: 1764


into the evaporation chamber (see the last paragraph on page 8). Powell does not disclose that the vessels capable of withstanding pressures of not more than 25 bar. However, both of the vessels of Powell would operate under a certain pressure (it appears that the pressure would be around 1 bar). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of Powell by employ vessels capable of withstanding pressure of not more than 25 bar (e.g., 5 or 10 bar) because such vessels would effective to hold their contents during the process.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam M. Nguyen whose telephone number is (703) 305-7715. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-5408 for regular communications and (703) 305-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Tam M. Nguyen
Examiner
Art Unit 1764

TN
June 15, 2003